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of Harvard University, has, however, been added. In this the general history of the treatise and the author has been rewritten in the light of modern investigations. This introductory portion is divided into four chapters. The first is a biographical sketch of the traditional author, Ranulph de Glanville, and gives an outline of the principal events in his career. The second discusses the authorship of the "Tractatus." Professor Beale is inclined to compromise between the traditional view and Professor Maitland's suggestion that it was the work of Glanville's nephew and secretary, Hubert Walter. The view is advanced that the general outline was the idea of the chief justiciar, but the execution was left in large part to his secretary. This offers a very plausible solution to a problem on which the evidence is so scanty that no dogmatic opinion is permissible. The third part of the introduction deals with the character of the treatise itself, and outlines the reforms of Henry the Second. The fourth part gives a succinct account of the actual state of the law as it was in the middle and latter part of the twelfth century.

The present volume is the first of what is to be known as the "Legal Classic Series," whose purpose is to reprint standard translations of the earlier treatises on the law of England. The object of this is twofold: to enable all to procure a copy of such treatises, and to place them before the public in such a form that they can be read by the average practitioner, to whom the perusal of a Latin text would perhaps not be entirely satisfactory. Such a purpose cannot be too highly commended. Every American, whether he be a lawyer or not, should be familiar with the outlines of our legal as well as our political history. To accomplish this no method is more satisfactory than a careful reading of our earlier treatises. Moreover there are, and always must be, in a system like ours, many rules, which, considered from the point of view of reason alone, must seem, even to a lawyer, illogical and arbitrary in the extreme, but which can all be satisfactorily explained when the origin and history of each is known.

H. F.

THE DEVELOPMENT OF LAW AS ILLUSTRATED BY THE DECISIONS RELATING TO THE POLICE POWER OF THE STATE. By W. G. Hastings. Reprinted from the Proceedings of the American Philosophical Society, vol. xxxix, no. 163. pp. 196.

This excellent and readable essay is that for which the Henry W. Phillips Prize of \$2,000 was awarded by the committee of judges appointed by the American Philosophical Society for Promoting Useful Knowledge. The author finds the first use of the term "Police Power" in its present form in Marshall's opinion in *Brown v. Maryland* (1827), and in the various opinions delivered by the Supreme Court judges in *Mayor of New York v. Miln* (1837). Its subsequent adoption by the federal court in those decisions where state legislation seemed to clash with acts of Congress or the Constitution, and in all courts to denominate the regulating power, was due in large part, he tells us, to the vogue given to the phrase during the states-rights controversy. The author shows that the term is usually considered to include all the unclassified legislative power of the states — and chiefly the power of making regulations of all sorts. It is, he says, that "indefinite supremacy" left in the states after taking away the powers delegated to the federal government by the Constitution and those powers of the states which have specific

names, taxation, eminent domain, etc. The phrase is not capable, therefore, of exact definition.

The greater part of the book is taken up with a discussion in chronological order of the federal decisions involving the police power of the states on the one hand, and of the rights of the federal government under the "commercial power" and the later constitutional amendments on the other. In regard to commerce two points are emphasized. The earlier view that the states could legislate on matters of interstate and foreign commerce until Congress should act is preferred to the present doctrine of the Supreme Court that the silence of Congress upon the matter is taken to indicate an intention that it remain unhampered by any legislation, federal or state. To show that such was the view held by Marshall he refers to the latter's opinion in *Wilson v. Blackbird Creek Marsh Co.*, and says that the only claim of those of the modern school upholding the exclusive power of Congress over interstate and foreign commerce that they are following in the footsteps of the great Chief Justice is based on the statement of Story in *Mayor of New York v. Miln* decided in 1837. Mr. Hastings argues strongly that there is no such hard and fast line of distinction between the police power of a state and the federal commercial power as is now laid down in the Supreme Court, but that they are really the exercise by different sovereignties of the same power of making needful regulations. There is, it seems, a police power vested in Congress as well as in the states, — the power to regulate those matters intrusted by the Constitution to the federal government.

Taking as his thesis the development and application of the term police power in American jurisprudence, the author in his conclusion says that it exemplifies the important part played by habit in our law. He speaks of its use in the application of the common law precedents as balking the intended effect of the Fourteenth Amendment and turning it to quite unexpected uses. This seems to be hardly a fair conclusion, for the amendment is phrased in broad terms and was not expressly confined to the protection of the negro race, as Mr. Hastings contends, and this Amendment as well as those other provisions of our Constitutions which go to make up our Bills of Rights are to be construed with reference to the common law precedents, as such was undoubtedly the intent of the framers of those instruments. Mr. Hastings has given us a very welcome addition to the works on this special subject. The book on the whole is a clear statement of what would seem to be the true principles of constitutional interpretation.

E. S. T.

We have also received: —

A TREATISE ON COVENANTS WHICH RUN WITH THE LAND OTHER THAN COVENANTS FOR TITLE. By Henry Upson Sims. Chicago: Callaghan & Co. 1900. pp. xxxi, 288. *Review will follow.*

A TREATISE ON THE LAW OF SURETYSHIP AND GUARANTY. By Darius H. Pingrey. Albany, N. Y.: Matthew Bender. pp. xvi, 443. *Review will follow.*